

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review by Brooklyn Public Library)	CC Docket No. 02-6
of Decision of Universal Service Administrator)	
)	

**REQUEST FOR REVIEW BY BROOKLYN PUBLIC LIBRARY OF DECISION OF
UNIVERSAL SERVICE ADMINISTRATOR**

Applicant Name:	Brooklyn Public Library
Billed Entity Number:	123803
FCC Form 471 Application Number:	954303
Funding Request Number:	2596173
USAC Decision on Appeal:	June 22, 2017

Pursuant to Section 54.719(b) of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) rules,¹ Brooklyn Public Library (“BPL”), through its undersigned counsel, respectfully requests review of the Universal Service Administrative Company’s (“USAC’s”) denial of BPL’s appeal of USAC’s decision to rescind, in-full, BPL’s E-rate support for Funding Year 2014 based on a ministerial or clerical error BPL made in its E-rate application (“Form 471”).² BPL is a party aggrieved by an action taken by the USAC Administrator.

I. STATEMENT OF MATERIAL FACTS

BPL is a not-for-profit system of 60 public libraries that has served New York City’s borough of Brooklyn since its creation by the New York State Assembly on May 1, 1892.³

¹ 47 C.F.R. § 54.719(b).

² See USAC, Administrator’s Decision on Appeal – Funding Year 2014-2015, Letter to Ari Q. Fitzgerald, Counsel to Brooklyn Public Library (June 22, 2017) (the “USAC Appeal Denial”). A true and correct copy of the USAC Appeal Denial is attached hereto as “Exhibit 1.”

³ See Declaration of Brett D. Robinson on Behalf of Brooklyn Public Library (the “Robinson Declaration”). A true and correct copy of the Robinson Declaration is attached hereto as “Exhibit 2.”

Independent from the New York City and Queens libraries, BPL is the fifth largest public library system in the United States.⁴ BPL provides access to library services to the approximately 2.5 million residents of the borough of Brooklyn in New York City, New York.⁵ Every Brooklyn resident is located within a half-mile of a BPL branch, putting free and open access to information for education, recreation, and reference easily within reach.⁶ BPL boasts over 1.6 million cardholders across its 60 branches and logged approximately 8.65 million visits to its branches last year.⁷ In June 2016, BPL received the National Medal, the nation's highest honor for museums and libraries which is awarded to institutions that "demonstrate impactful programs and services that exceed the expected levels of community outreach."⁸ BPL provided over two million personal computer sessions over its 1,400 PCs in the last fiscal year, and nearly one million attendees participated in BPL's award-winning programs last year.⁹

⁴ See Robinson Declaration ¶ 3.

⁵ See NYC Population: Current and Projected Populations, <http://www1.nyc.gov/site/planning/data-maps/nyc-population/current-future-populations.page> (last visited Aug. 2, 2017). Brooklyn's neighborhoods are some of the most diverse in the country. Over 37 percent (37.6%) of Brooklyn's residents were born outside of the United States, and 23.3 percent of its residents' English proficiency is ranked "less than 'very well.'" 2015 American Community Survey 1-Year Estimates; DP02: Selected Social Characteristics in the United States; New York City and Boroughs 11-12, http://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/acs/soc_2015acs1yr_nyc.pdf (last visited Aug. 2, 2017).

⁶ Robinson Declaration ¶ 3.

⁷ *Id.*

⁸ See Press Release, Brooklyn Public Library Earns Nation's Highest Honor for Museums and Libraries (June 1, 2016), <https://www.bklynlibrary.org/media/press/brooklyn-public-library-e-5> (last visited Aug. 2, 2017) ("BPL National Medal Release").

⁹ Robinson Declaration ¶ 3.

BPL relies on funding from the FCC's E-rate program¹⁰ to provide digital services to its patrons.¹¹ BPL has applied for and received E-rate funding since 1998.¹² To date, BPL has received funding commitments totaling \$48 million.¹³ Over these nearly two decades, BPL has at all times acted in good faith and complied with the FCC's and USAC's rules for E-rate funding.¹⁴ BPL has used this critical funding to purchase digital transmission and internet access services to connect its library branches to one another and its patrons to the world.

Consistent with its past practices, BPL initiated a competitive bidding process for Funding Year 2014 in the early part of that year.¹⁵ Specifically, BPL submitted an FCC Form 470 describing the E-rate eligible services it wished to purchase for Funding Year 2014 on January 15, 2014.¹⁶ BPL received proposals from Verizon Business ("Bid 1" or "Verizon"), Windstream Communications, LLC ("Bid 2" or "Windstream") and Cogent Communications, Inc. ("Bid 3" or "Cogent") to provide the services BPL sought in its Form 470.

BPL evaluated each of the three proposals using its "E-Rate Bid Assessment Worksheet" created for this purpose.¹⁷ The Bid Worksheet included five selection criteria: (1) Prices/Charges; (2) Understanding of Needs; (3) Prior Experience; (4) Personnel Qualifications;

¹⁰ The FCC's E-rate program is also known as the schools and libraries universal service program. For ease of reference, BPL refers to the program as the "E-rate" program herein.

¹¹ See Robinson Declaration ¶ 4.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* ¶¶ 4, 6.

¹⁵ *Id.* ¶ 5.

¹⁶ See FCC Form 470 Application No. 221680001199170, Brooklyn Public Library (filed Jan. 15, 2014), http://www.siforms.universalservice.org/Form470Expert/5/PrintPreview.aspx?appl_id=1199170&fy=2014&src=search (last visited May 18, 2017).

¹⁷ See BPL E-Rate Bid Assessment Worksheet for Internet Access Service (the "Bid Worksheet"). A true and correct copy of the Bid Worksheet is attached hereto as "Exhibit 3."

and (5) Financial Stability.¹⁸ BPL made clear in the notes section of the Bid Worksheet that each selection criteria should be evaluated on a scale of one to five (with one representing the lowest score and five representing the highest score) and that the “[p]ercentage weights must add up to 100%. Price must be weighted the heaviest.”¹⁹ BPL assigned a weighting value of 50 points to the Prices/Charges criteria—30 points more than the next highest weighted selection criteria (Understanding of Needs).²⁰ Thus, the evaluation framework in the Bid Worksheet complied with the FCC’s competitive bidding rules for the E-rate program.

Unfortunately, in applying its evaluation framework, BPL committed a ministerial or clerical error that resulted in it selecting a different service provider than Bid 3, the lowest-priced bidder.²¹ BPL assigned Bid 3 the highest raw score (five points) for the Prices/Charges selection criteria. But BPL mistakenly transposed the raw scores for the other two bidders, Verizon and Windstream, inadvertently assigning Verizon a raw score of three points and Windstream a raw score of four points, despite the fact that Verizon’s proposal included smaller monthly recurring charges than Windstream’s proposal.²² BPL’s clerical data-entry error, combined with the automatic tabulation of the vendors’ overall rankings in the Bid Worksheet, led to BPL selecting Windstream as the most cost-effective provider based on application of its evaluation

¹⁸ See Bid Worksheet.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Robinson Declaration ¶ 5.

²² *Id.*

framework.²³ BPL subsequently filed an FCC Form 471 seeking E-rate funding for services based on the Windstream proposal.²⁴

Subsequently, USAC commissioned an independent audit of BPL's selection process for Funding Year 2014.²⁵ KPMG, the independent auditing firm hired by USAC to conduct the audit, found that "[w]hile [BPL] had bid evaluation criteria in place to weight price as the primary factor, [it] did not correctly calculate the raw pricing scores for two of three bids"²⁶ USAC agreed with KPMG that BPL made price as the primary factor in its bid evaluation criteria.²⁷ Nonetheless, KPMG found that BPL had violated the FCC's competitive bidding rules and recommended that USAC seek recovery from BPL in the amount of \$570,426, the full amount of the funding commitment for the services purchased from Windstream for Funding Year 2014.²⁸

USAC issued a Notification of Commitment Adjustment ("COMAD") letter to BPL on March 24, 2017, rescinding the funding commitment in full.²⁹ In the COMAD letter, USAC

²³ *Id.*

²⁴ See FCC Form 471 Application No. 954303, Brooklyn Public Library (filed Mar. 19, 2014), http://www.siforms.universalservice.org/Form471Expert/FY17/PrintPreview.aspx?appl_id=954303&_prevPage=true&isDisplay=true (last visited Aug. 2, 2017).

²⁵ See KPMG LLC, *Brooklyn Public Library, Audit ID: SL2015BE112 (Ben: 123803); Performance audit for the Universal Service Schools and Libraries Program Disbursements related to Funding Year 2014 as of August 31, 2015* (July 27, 2016) (the "KPMG Audit"). A true and correct copy of the KPMG Audit is attached hereto as "Exhibit 4."

²⁶ KPMG Audit at 10.

²⁷ *Id.* at 12.

²⁸ See generally *id.*

²⁹ See Letter from Schools and Libraries Division, USAC, to Selvon Smith, Director of IT, Brooklyn Public Library (Mar. 24, 2017) (the "COMAD Letter"). A true and correct copy of the COMAD Letter is attached hereto as "Exhibit 5."

alleged that “[t]he price of eligible products and services was not the primary factor in the vendor selection process”³⁰

BPL appealed USAC’s decision on May 22, 2017.³¹ In its appeal, BPL noted that its bid assessment protocols complied with the FCC’s competitive bidding rules and that BPL’s only error was inverting the raw scores of two service providers for the price criteria.³² BPL also detailed additional safeguards it has adopted in response to USAC and KPMG’s audit to ensure an adequate E-rate bid review process in the future.³³ USAC denied BPL’s appeal on June 22, 2017.³⁴

II. QUESTION PRESENTED FOR REVIEW

Whether USAC committed reversible error in finding that BPL violated Section 54.511(a) of the FCC’s rules when BPL: (1) made the price of eligible products and services the primary factor in its bid selection evaluation framework; (2) awarded the lowest-priced bidder

³⁰ COMAD Letter at 4.

³¹ See Letter from Ari Q. Fitzgerald, Counsel to Brooklyn Public Library to Schools to Schools and Libraries Program Correspondence Unit, USAC, Letter of Appeal – Form 471 Application No. 954303 (May 22, 2017) (the “USAC Appeal”). A true and correct copy of the USAC Appeal is attached hereto as “Exhibit 6.”

³² USAC Appeal at 3. BPL further noted that its dissatisfaction with Bid 3 was evident by the other scores it gave the proposal for the other selection criteria in its evaluation framework. *Id.*

³³ *Id.*

³⁴ See USAC Appeal Denial. Notably, USAC apparently denied BPL’s appeal based on its belief that BPL’s requested relief would require an FCC waiver of the E-rate competitive bidding rules. See *id.* at 3 (“As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.”). BPL filed a waiver petition with the FCC on the same day it filed the USAC Appeal. See Petition for Waiver by Brooklyn Public Library of Sections 54.504(a)(1)(ix) and 54.511(a) of the Commission’s Rules, CC Docket No. 02-6 (filed May 22, 2017). The Wireline Competition Bureau recently denied BPL’s waiver petition. See *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, CC Docket No. 02-6, DA 17-712 at 9 (WCB July 31, 2017). BPL is filing an application for review contemporaneously with this appeal. See Application for Review by Brooklyn Public Library, CC Docket No. 02-6 (filed August 18, 2017).

the highest raw score for the price criterion; and (3) at all times acted in good faith and consistent with the purposes underlying the FCC’s competitive bidding rules?

III. DISCUSSION

The Commission conducts a *de novo* review of USAC decisions like the COMAD letter and USAC Appeal Denial.³⁵ Section 54.511(a) of the FCC’s rules requires E-rate recipients to “carefully consider all bids submitted and . . . select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered.”³⁶ The FCC does not require schools and libraries to select the lowest bids offered, but rather “permit[s] schools and libraries ‘maximum flexibility’ to take service quality into account and to choose the offering or offerings that meets their needs ‘most effectively and efficiently,’ where this is consistent with other procurement rules under which they are obligated to operate.”³⁷ “When evaluating bids, however, applicants must have a separate ‘cost category’ and that category must be given more weight than any other single factor.”³⁸

Consistent with the FCC’s rules, BPL made price of eligible products and services the primary factor in its bid selection evaluation framework. Additionally, BPL awarded the lowest-priced bidder the highest raw score for the price criterion. Unfortunately, BPL made a

³⁵ 47 C.F.R. § 54.723.

³⁶ 47 C.F.R. § 54.511(a).

³⁷ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶ 481 (1997).

³⁸ See *Application for Review of a Decision of the Wireline Competition Bureau by Henrico County School District Richmond, Virginia*, Order, 29 FCC Rcd 10837, 10838 ¶ 2 (2014) (“*Henrico FCC Order*”) (citing *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, Order, 18 FCC Rcd 26407 ¶ 50 (2003)).

ministerial or clerical error that resulted in it selecting a different service provider than the bidder that submitted the lowest-priced bid.

BPL's bid assessment protocols complied with the competitive bidding rules. BPL created a bid evaluation matrix composed of several selection criteria, including price.³⁹ BPL made clear in the notes section of the matrix that each selection criteria should be evaluated on a scale of one to five (with one representing the lowest score and five representing the highest score) and that the "[p]ercentage weights must add up to 100%. Price must be weighted the heaviest."⁴⁰ BPL assigned a weighting value of 50 points to the price criteria—30 points more than the next highest weighted selection criteria ("Understanding of Needs").⁴¹

In addition to creating a compliant bid evaluation framework, BPL awarded Bid 3 the highest raw score in the price category.⁴² BPL's only error was inverting the raw scores of Verizon and Windstream for the price criteria. The result of BPL's error was to select a different service provider than the bidder with the lowest-priced bid. Importantly, the totals under the recalculated bid evaluation were almost identical.⁴³

BPL has since adopted additional safeguards to prevent against future ministerial errors following the independent audit. As BPL stated in its response to the KPMG Audit, it has adopted the following new review procedures:

Following the evaluation discussion among the Library's network manager and the two Library managers, (1) the network manager will enter the scores from the

³⁹ See Bid Worksheet.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See KPMG Audit at 11. Specifically, Cogent should have received 400 points under the recalculated bid evaluation criteria, and Verizon and Windstream would have each received 395 points—a difference of only five points.

network manager's and the two Library managers' individual bid evaluation scoring sheets into the summary evaluation scoring matrix[;] (2) the network manager will review the summary evaluation scoring matrix against the individual bid evaluation scoring sheets and notes from the evaluation discussion for accuracy; (3) when the network manager completes his/her review, copies of the summary evaluation scoring matrix, individual bid evaluation scoring sheets, and notes from the evaluation discussion will be forwarded to the two Library managers on the evaluation team, who will each thoroughly review the data for accuracy; and (4) once the two reviews have been conducted and any necessary corrections are made, the winning bidder will be selected based on the final scores in the summary evaluation scoring matrix.⁴⁴

BPL committed that "Price will continue to be the primary factor in [its] selection process (*i.e.*, Price will be given the highest percentage in the total evaluation weighting)."⁴⁵

Thus, BPL fully complied with the FCC's competitive bidding rules in creating its evaluation framework. Neither KPMG nor USAC has alleged that BPL attempted to act with any malice or intent to deceive or defraud the E-rate program.

IV. STATEMENT OF RELIEF SOUGHT

BPL respectfully requests that the FCC: (i) reverse the findings in the COMAD Letter and the USAC Appeal Denial; (ii) find that BPL's 2014 Funding Year FCC Form 471 application did not violate Section 54.511(a) of the FCC's rules; (iii) allow BPL to correct the ministerial error in its Funding Year 2014 Form 471 application; and (iv) permit BPL to retain the full amount of its original funding commitment for Funding Year 2014.

Respectfully submitted,

/s/ Ari Q. Fitzgerald

Ari Q. Fitzgerald

C. Sean Spivey

Hogan Lovells US LLP

555 Thirteenth Street, NW

Washington, DC 20004

(202) 637-5600

⁴⁴ *Id.* at 12.

⁴⁵ *Id.*

Chloe Wasserman
General Counsel
Brooklyn Public Library
10 Grand Army Plaza
Brooklyn, NY 11238
(718) 230-2776

August 18, 2017

cc: William Elliott
Windstream Communications, LLC
1440 M Street, 6th Floor
Lincoln, NE 68510
(402) 436-4466

Exhibits: Exhibit 1: USAC, Administrator's Decision on Appeal – Funding Year 2014-2015, Letter to Ari Q. Fitzgerald, Counsel to Brooklyn Public Library (June 22, 2017)

Exhibit 2: Declaration of Brett D. Robinson on behalf of Brooklyn Public Library

Exhibit 3: BPL 2014 E-Rate Bid Assessment Worksheet for Internet Access Service

Exhibit 4: KPMG LLC, *Brooklyn Public Library, Audit ID: SL2015BE112 (Ben: 123803); Performance audit for the Universal Service Schools and Libraries Program Disbursements related to Funding Year 2014 as of August 31, 2015* (July 27, 2016)

Exhibit 5: Letter from Schools and Libraries Division, USAC, to Selvon Smith, Director of IT, Brooklyn Public Library (Mar. 24, 2017)

Exhibit 6: Letter from Ari Q. Fitzgerald, Counsel to Brooklyn Public Library to Schools to Schools and Libraries Program Correspondence Unit, USAC, Letter of Appeal – Form 471 Application No. 954303 (May 22, 2017)

CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. § 54.721(c), I, C. Sean Spivey, hereby caused a true and correct copy of the foregoing **REQUEST FOR REVIEW BY BROOKLYN PUBLIC LIBRARY OF DECISION OF UNIVERSAL SERVICE ADMINISTRATOR** to be served on the following *via* United States mail this 18th day of August, 2017:

USAC
Schools and Libraries Program – Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, NJ 07054-0685

C. Sean Spivey

C. Sean Spivey

Exhibit 1

Ari Q. Fitzgerald
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Billed Entity Number: 123803
Form 471 Application Number: 954303
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2014-2015

June 22, 2017

Ari Q. Fitzgerald
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Re: Applicant Name: BROOKLYN PUBLIC LIBRARY
Billed Entity Number: 123803
Form 471 Application Number: 954303
Funding Request Number(s): 2596173
Your Correspondence Dated: May 22, 2017

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2014 Notification of Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2596173
Decision on Appeal: **Denied**
Explanation:

- As result of an audit, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. The applicant incorrectly inverted the scores of the bidders on the bid evaluation worksheet which resulted in the most cost effective vendor not being selected. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and

USAC will seek recovery of any improperly disbursed funds from the applicant. In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

- FCC rules require that applicants select the most cost-effective products and/or services offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. *See* 47 C.F.R. sec. 54.511(a); also, Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., SLD Nos. 321479, et al., CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26429, FCC 03-313 para. 50 (rel. Dec. 8, 2003). Ineligible products and services may not be factored into the cost-effective evaluation. *See* Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries, CC Docket No. 96-45, Public Notice, 13 FCC Rcd 16570, DA 98-1110 (rel. Jun. 11, 1998).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Selvon Smith

Exhibit 2

**DECLARATION OF BRETT D. ROBINSON
ON BEHALF OF BROOKLYN PUBLIC LIBRARY**

1. I, Brett D. Robinson, am Executive Vice President for Finance and Administration for Brooklyn Public Library ("BPL"). I am over 18 years of age, of sound mind and the facts provided in this Declaration are within my personal knowledge.
2. The purpose of this Declaration is to provide background information regarding BPL and to describe the ministerial or clerical error that resulted in BPL selecting a different internet service provider for the 2014 E-rate Funding Year than the lowest-priced service provider.
3. BPL is a not-for-profit system of 60 public libraries that has served New York City's borough of Brooklyn since its creation by the New York State Assembly on May 1, 1892. Independent from the New York City and Queens libraries, the BPL is the fifth largest public library system in the United States. Every Brooklyn resident is located within a half-mile of a BPL branch. BPL has 1,605,534 cardholders across its 60 branches. BPL cardholders logged 8,650,686 visits in the last fiscal year and 994,279 people attended BPL's community programs during that period. BPL provided 2,184,487 personal computer sessions over its 1,400 PCs in the last fiscal year.
4. BPL relies on funding from the FCC's E-rate program to provide digital services to its patrons. BPL has applied for and received E-rate funding since 1998. To date, BPL has received funding commitments totaling \$48,228,098. BPL has at all times acted in good faith and complied with the FCC's and USAC's rules for E-rate funding.
5. BPL conducted a competitive bidding process for its internet access services for Funding Year 2014 and received three bids in response. BPL evaluated each of the three proposals using its "E-Rate Bid Assessment Worksheet" created for this purpose. This bid assessment worksheet was developed in compliance with the FCC's E-rate competitive bidding rules. Unfortunately, BPL committed a slight ministerial or clerical error that resulted in it selecting a different service provider than Cogent, the lowest-cost bidder. BPL assigned Cogent the highest raw score (five points) for the Prices/Charges selection criteria. But BPL mistakenly transposed the raw scores for Verizon and Windstream, inadvertently assigning Verizon a raw score of three points and Windstream a raw score of four points, despite the fact that Verizon's proposal included smaller monthly recurring charges than Windstream's proposal. BPL's clerical data-entry error, combined with the automatic tabulation of the vendors' overall rankings in the Bid Worksheet led to BPL selecting Windstream as the most cost-effective provider under its selection criteria.
6. A 2016 KPMG audit and subsequent commitment adjustment letter were the first alleged violation of the FCC's competitive bidding rules by BPL. In response to the KPMG audit, BPL has instituted measures to ensure that it does not make a similar error in the future. BPL has enhanced its review process to verify that its bid worksheets are accurate and to ensure that a similar error cannot occur again, including implementing several layers of review prior to selecting a winning bidder.

7. BPL will need to materially reduce its operating budget for key items such as technology if it is forced to return the funds USAC awarded it for internet service for Funding Year 2014.

I declare under penalty of perjury that the foregoing is true and correct Executed on August 18, 2018.



Brett D. Robinson

Exhibit 3

Project or Service
DescriptionInternet Access
Interenet Access

Selection Criteria	Weight*
Prices/Charges	50
Understanding of Needs	20
Prior Experience	15
Personnel Qualifications	10
Financial Stability	5
Other (describe)	
Other (describe)	

Verizon	
Raw Score**	Weighted Score***
3	150
4	80
4	60
3	30
5	25
	0
	0

Windstream	
Raw Score**	Weighted Score***
4	200
5	100
5	75
5	50
4	20
	0
	0

Cogent	
Raw Score**	Weighted Score***
5	250
3	60
3	45
3	30
3	15
	0
	0

None	
Raw Score**	Weighted Score***
0	0
0	0
0	0
0	0
0	0
	0
	0

Overall Ranking

100%

345

69%

445

89%

400

80%

0

0%

Vendor Selected: Windstream
 Approved By: Jeff Marable
 Title: Network Manager
 Date: 2/18/2014

Notes:

* Percentage weights must add up to 100%. Price must be weighted the heaviest

** Evaluated on scale of 1 to 5: 1=worst, 5=best

*** Weight x Raw Score

Exhibit 4



Brooklyn Public Library
Audit ID: SL2015BE112
(BEN: 123803)

*Performance audit for the Universal Service Schools and
Libraries Program Disbursements related to Funding
Year 2014 as of August 31, 2015*

Prepared for: Universal Service Administrative Company

As of Date: July 27, 2016

KPMG LLP
1601 Market Street
Philadelphia, PA 19103

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
BACKGROUND	6
Program Overview	6
Beneficiary Overview	6
OBJECTIVES, SCOPE AND METHODOLOGY	8
Objectives	8
Scope.....	8
Methodology	8
RESULTS	10
Findings, Recommendations and Beneficiary Responses.....	10
Conclusion	14



KPMG LLP
1601 Market Street
Philadelphia, PA 19103-2499

EXECUTIVE SUMMARY

July 27, 2016

Mr. Wayne Scott, Vice President – Internal Audit Division
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, DC 20036

Dear Mr. Scott:

This report presents the results of our work conducted to address the performance audit objectives relative to the Brooklyn Public Library, Billed Entity Number (“BEN”) 123803, (“BPL” or “Beneficiary”) for disbursements, of \$1,407,355, made from the federal Universal Service Schools and Libraries Program (“SLP”) related to the twelve-month period ended June 30, 2015, as of August 31, 2015 (hereinafter “Funding Year 2014”). Our work was performed during the period from October 16, 2015 to July 27, 2016, and our results are as of July 27, 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards and *American Institute of Certified Public Accountants Consulting Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of this performance audit was to evaluate the Beneficiary’s compliance with the applicable requirements of 47 C.F.R. Part 54 of the Federal Communications Commission’s (“FCC”) Rules as well as FCC Orders governing federal Universal Service Support for the Schools and Libraries Support Mechanism (“E-rate Program”) relative to disbursements, of \$1,407,355, made from the E-rate Program related to Funding Year 2014.

As our report further describes, KPMG identified the following as a result of the work performed:

1. **SL2015BE112-F01: Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering** – While the Beneficiary had bid evaluation criteria in place to weigh price as the primary factor, they did not correctly calculate the raw pricing scores for two of three bids evaluated for Funding Request Number (“FRN”) 2596173 (Internet Access). As a result, the Beneficiary did not select the most cost effective bid.
2. **SL2015BE112-F02: Beneficiary Over-Invoiced the SLP for Ineligible Services** – The Beneficiary included ineligible charges for upgraded circuits in transition, additional directory listings and “other business” non-recurring charges in the E-rate Program reimbursement requests submitted under FRNs 2596201 and 2596059.

Based on the above results, we estimate that disbursements made to the Beneficiary from the E-rate Program related to Funding Year 2014 were \$578,271 higher than they would have been had the amounts been reported properly.

In addition, we also noted other matters that we have reported to the management of the Beneficiary in a separate letter dated July 27, 2016.



This performance audit did not constitute an audit of financial statements in accordance with *Government Auditing Standards*. KPMG was not engaged to, and did not render an opinion on the Beneficiary's internal controls over financial reporting or over financial management systems (for purposes of OMB's Circular No. A-127, *Financial Management Systems*, July 23, 1993, as revised). KPMG cautions that projecting the results of our evaluation to future periods is subject to the risks that controls may become inadequate because of changes in conditions or because compliance with controls may deteriorate.

This report is intended solely for the use of the Universal Service Administrative Company, the Beneficiary, and the FCC, and is not intended to be and should not be relied upon by anyone other than these specified parties.

Sincerely,

KPMG LLP

List of Acronyms

Acronym	Definition
BEAR	Billed Entity Applicant Reimbursement
BEN	Billed Entity Number
BPL	Brooklyn Public Library
C.F.R.	Code of Federal Regulations
CIPA	Children's Internet Protection Act
FCC	Federal Communications Commission
FCC Form 470	Description of Services Requested and Certification Form 470
FCC Form 471	Description of Services Ordered and Certification Form 471
FCC Form 472	Billed Entity Applicant Reimbursement Form
FCC Form 474	Service Provider Invoice Form
FCC Form 479	Certification of Compliance with the Children's Internet Protection Act
FCC Form 486	Receipt of Service Confirmation and Children's Internet Protection Act and Technology Plan Certification Form
FRN	Funding Request Number
Funding Year 2014	Disbursements made from the E-rate Program related to the twelve-month period ended June 30, 2015 (as of August 31, 2015)
GAGAS	Generally Accepted Government Auditing Standards
Item 21 Attachment	Description of the products and services for which discounts are sought in the FCC Form 471
SLP	Schools and Libraries Program
SPI	Service Provider Invoice
USAC	Universal Service Administrative Company
USF	Universal Service Fund

BACKGROUND

Program Overview

USAC is an independent not-for-profit corporation that operates under the direction of the FCC pursuant to 47 C.F.R. Part 54. The purpose of USAC is to administer the USF through four support mechanisms: High Cost; Low Income; Rural Health Care; and Schools and Libraries. These four support mechanisms ensure that all people regardless of location or income level have affordable access to telecommunications and information services. USAC is the neutral administrator of the USF and may not make policy, interpret regulations or advocate regarding any matter of universal service policy.

The Schools and Libraries (E-rate) Program is one of four support mechanisms funded through a Universal Service fee charged to telecommunications companies that provide interstate and/or international telecommunications services. USAC administers the USF at the direction of the FCC; USAC's SLP administers the E-rate Program.

The E-rate Program provides discounts to assist eligible schools and libraries in the United States to obtain affordable telecommunications equipment and services and Internet access. Five service categories are funded:

- Telecommunications
- Telecommunications Services
- Internet Access
- Internal Connections Other than Basic Maintenance
- Basic Maintenance of Internal Connections

Discounts range from 20% to 90% of the costs of eligible services, depending on the level of poverty and the urban/rural status of the population served. Eligible schools, school districts and libraries may apply individually or as part of a consortium.

The E-rate Program supports connectivity – the conduit or pipeline for communications using telecommunications services and/or the Internet. The school or library is responsible for providing additional resources such as the end-user equipment (computers, telephone handsets, and modems), software, professional development, and the other elements that are necessary to fully enable such connectivity.

USAC engaged KPMG to conduct a performance audit relating to the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules as well as FCC Orders governing the E-rate Program relative to disbursements, of \$1,407,355, made for Funding Year 2014.

Beneficiary Overview

Brooklyn Public Library (BEN# 123803), is a public library system located in Brooklyn, New York, that serves over 2.5 million residents of the borough of Brooklyn.

The following table illustrates the E-rate Program support disbursed by USAC to the Beneficiary for Funding Year 2014 by service type:

Service Type	Amount Committed	Amount Disbursed
Internet Access	\$ 570,675	\$ 570,426
Telecommunications Services	\$ 913,180	\$ 836,929
Total	\$1,483,855	\$1,407,355

Source: USAC

Note: The amounts committed and disbursed reflect Funding Year 2014 activity as of August 31, 2015.

The committed total represents one FCC Form 471 application with five FRNs. We selected three FRNs, which represent \$1,327,424 of the funds disbursed for the audit period, to perform the procedures enumerated below related to the Funding Year 2014 application submitted by the Beneficiary.

OBJECTIVES, SCOPE AND METHODOLOGY

Objectives

The objective of this performance audit was to evaluate the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules as well as FCC Orders governing the E-rate Program relative to disbursements of \$1,407,355 made from the E-rate Program for Funding Year 2014. See the Scope section below for a discussion of the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules that are covered by this performance audit.

Scope

The scope of this performance audit includes, but is not limited to, examining on a test basis, evidence supporting the competitive bidding process undertaken to select service providers, data used to calculate the discount percentage and the type and amount of services received, invoices supporting services delivered to the Beneficiary and reimbursed via the E-rate Program, as well as performing other procedures we considered necessary to form a conclusion relative to disbursements made from the E-rate Program for Funding Year 2014.

KPMG identified the following areas of focus for this performance audit:

1. Application Process
2. Competitive Bid Process
3. Calculation of the Discount Percentage
4. Invoicing Process
5. Reimbursement Process
6. Record Keeping
7. Final Risk Assessment

Methodology

This performance audit includes procedures related to the E-rate Program for which funds were received by the Beneficiary for Funding Year 2014. The procedures conducted during this performance audit include the following:

1. Application Process

We obtained an understanding of the Beneficiary's processes relating to the application and use of E-rate Program funds. Specifically, for the FRNs audited, we examined documentation to support the Beneficiary's effective use of funding and that adequate controls exist to determine whether funds were used in accordance with the FCC's Rules. We used inquiry to determine whether the Beneficiary was eligible to receive funds and had the necessary resources to support the services for which funding was requested. We also used inquiry to determine if any individual schools or entities related to the Beneficiary are receiving USAC funded services through separate FCC Forms 471 and FRNs.

We obtained and examined documentation to determine whether the Beneficiary complied with the FCC's CIPA requirements. Specifically, we obtained and evaluated the Beneficiary's Internet Safety

Policy, and obtained an understanding of the process by which the Beneficiary communicated and administered the policy.

2. Competitive Bid Process

For the FRNs audited, we obtained and examined documentation to determine whether all bids received were properly evaluated and that price of the eligible services was the primary factor considered. We also obtained and examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 470 was posted on USAC's website before signing contracts or executing month-to-month agreements with the selected service providers. We reviewed the service provider contracts to determine whether they were properly executed. We evaluated the services requested and purchased for cost effectiveness as well.

3. Calculation of the Discount Percentage

For the FRNs audited, we obtained and examined documentation to understand the methodology used by the Beneficiary to calculate the discount percentage. We also obtained and examined documentation supporting the discount percentage calculation and determined if the calculations were accurate.

4. Invoicing Process

For the FRNs audited, we obtained and examined invoices for which payment was disbursed by USAC to determine that the services claimed on the FCC Form 472 (BEARs) and corresponding service provider bills were consistent with the terms and specifications of the service provider agreements. We also examined documentation to determine whether the Beneficiary paid its non-discounted share in a timely manner. KPMG utilized a statistical sampling methodology to select a sample of invoices for review.

5. Reimbursement Process

For the FRNs audited, we obtained and examined invoices submitted for reimbursement for the services delivered to the Beneficiary and performed procedures to determine whether USAC was invoiced properly. Specifically, we reviewed invoices associated with the BEAR forms for services provided to the Beneficiary. We verified that the services claimed on the BEAR forms and corresponding service provider bills were consistent with the terms and specifications of the service provider agreements and eligible in accordance with the E-rate Program Eligible Services List.

6. Record Keeping

We determined whether the Beneficiary's record retention policies and procedures are consistent with the E-rate Program rules. Specifically, we determined whether the Beneficiary was able to provide the documentation requested in the audit notification, for the FRNs audited, as well as retained and provided the documentation requested in our other audit procedures.

7. Final Risk Assessment

Based on the performance of the above audit procedures for the sampled FRNs, we considered any non-compliance detected during the audit and its effect on the FRNs excluded from the initial sample. We also considered whether any significant risks identified during the audit that may not have resulted in exceptions on the FRNs audited could affect other FRNs. Based on the coverage of

disbursements with the selected FRNs, KPMG concluded that expansion of the scope of the audit was not warranted.

RESULTS

KPMG's performance audit results include a listing of findings, recommendations, Beneficiary's responses and USAC management's responses with respect to the Beneficiary's compliance with FCC requirements, and an estimate of the monetary impact of such findings relative to 47 C.F.R. Part 54 applicable to disbursements made from the E-rate Program for Funding Year 2014.

Findings, Recommendations and Beneficiary Responses

KPMG's performance audit procedures identified two findings. The findings, including the condition, cause, effect, recommendation, Beneficiary response, Service Provider response, USAC management response and criteria are as follows:

Finding No. **SL2015BE112-F01: Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering**

Condition While the Beneficiary had bid evaluation criteria in place to weight price as the primary factor, they did not correctly calculate the raw pricing scores for two of three bids evaluated for FRN 2596173 (Internet Access). As a result, the Beneficiary did not select the most cost effective bid.

Table 1 below shows the price included in each bid and the raw pricing scores that the Beneficiary assigned to each bid. As shown, the Beneficiary inverted the raw scores for Bids 1 and 2. Based on the prices included in each bid, the raw scores should have matched what is shown in the recalculated raw score column of Table 1.

Table 1: Raw Pricing Scores

Bid #	Bid Price	Original Raw Score	Recalculated Raw Score
Bid 1	\$ 21,865	3	4
Bid 2	\$ 55,298	4	3
Bid 3	\$ 5,298 to 8,956	5	5

Table 2 below shows the Beneficiary's original bid evaluation which resulted in the selection of Bid 2. Table 3 shows the Recalculation of the bid evaluation with the correct raw pricing scores, and the winner would have been Bid 3.

Table 2: Original Bid Evaluation

Selection Criteria	Weight	Bid 1		Bid 2 (Winner)		Bid 3	
		Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score
Price	50	3	150	4	200	5	250
Understanding of Needs	20	4	80	5	100	3	60
Prior Experience	15	4	60	5	75	3	45
Personnel Qualifications	10	3	30	5	50	3	30
Financial Stability	5	5	25	4	20	3	15
Total			345		445		400

Table 3: Recalculated Bid Evaluation

Selection Criteria	Weight	Bid 1		Bid 2		Bid 3 (Winner)	
		Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score
Price	50	4	200	3	150	5	250
Understanding of Needs	20	4	80	5	100	3	60
Prior Experience	15	4	60	5	75	3	45
Personnel Qualifications	10	3	30	5	50	3	30
Financial Stability	5	5	25	4	20	3	15
Total			395		395		400

Cause The Beneficiary did not have an adequate review process in place to verify that the raw pricing scores were calculated correctly.

Effect The monetary effect for this finding is \$570,426. This amount represents the total disbursement for FRN 2596173.

Recommendation KPMG recommends that the Beneficiary enhance its review process to verify that bid evaluation scoring sheets are accurate in light of the content of bids and to ensure that the most cost effective bid is selected.

Beneficiary Response As stated in the Condition section above, “the Beneficiary had bid evaluation criteria in place to weigh price as the primary factor.” Specifically, as shown in Table 2, the Library created a separate selection criteria for Price and gave Price 50 percent of the total evaluation weighting. And for the criteria of Price, the Library appropriately gave the most points (5 points) to Bid 3 because it had the lowest price.

Unfortunately, for Funding Year 2014, after the Library’s network manager and two of the Library’s managers had discussed the raw scores to be awarded to each vendor for each selection criteria, the Library’s network manager made a clerical error and inverted the raw Price scores for Bids 1 and 2 when he was typing the raw scores into a summary evaluating scoring matrix on his computer. This is shown in Tables 1 and 2 above. This clerical error resulted in an incorrect calculation of the final scores. Nevertheless, with regard to three of the four other selection criteria (Understanding of Needs, Prior Experience, and Financial Stability), Bid 3 had the lowest scores, reflecting the Library’s opinion at the time

of bid evaluation that, on these non-price criteria, Bid 3 was less qualified than the other two Bids.

Once the Library was made aware of this clerical error, it enhanced its review process to verify that its bid evaluation scoring sheets are accurate and to ensure that a similar clerical error does not occur again. Specifically, following the evaluation discussion among the Library's network manager and the two Library managers, (1) the network manager will enter the scores from the network manager's and the two Library managers' individual bid evaluation scoring sheets into the summary evaluation scoring matrix, (2) the network manager will review the summary evaluation scoring matrix against the individual bid evaluation scoring sheets and notes from the evaluation discussion for accuracy; (3) when the network manager completes his/her review, copies of the summary evaluation scoring matrix, individual bid evaluation scoring sheets, and notes from the evaluation discussion will be forwarded to the two Library managers on the evaluation team, who will each thoroughly review the data for accuracy; and (4) once the two reviews have been conducted and any necessary corrections are made, the winning bidder will be selected based on the final scores in the summary evaluation scoring matrix. As was the case in Funding Year 2014, Price will continue to be the primary factor in the Library's selection process (*i.e.*, Price will be given the highest percentage in the total evaluation weighting).

**USAC
Management
Response**

The auditors reviewed the Beneficiary's bid evaluation to determine if it selected the most cost effective bid with price being the primary factor. The Beneficiary had bid evaluation criteria in place to weigh price as the primary factor, however the raw pricing score for two of three bids evaluated for FRN 2596173 was miscalculated.

Going forward, the Beneficiary should implement a review process to verify the accuracy of its bid evaluation scores to ensure that the most cost effective bid with price as the primary factor is selected. USAC Management will conduct outreach to the Beneficiary to address the areas of deficiency that are identified in the audit report.

USAC Management concurs with the finding and recommendation. USAC will seek recovery of the Schools and Libraries Program support consistent with the Rules.

Criteria

Per 47 C.F.R. Section 54.511(a) (2014), "*Selecting a provider of eligible services.* Except as exempted in §54.503(e), in selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered."

Finding No.	<u>SL2015BE112-F02: Beneficiary Over-Invoiced SLP for Ineligible Services</u>
Condition	<p>Ineligible charges for upgraded circuits in transition, additional directory listings and “other business” non-recurring charges were included in the Beneficiary’s E-rate Program reimbursement request.</p> <p>a) FRN 2596201: The Beneficiary included ineligible prorated charges totaling \$8,260 related to circuit upgrades in BEAR #2218513 submitted to SLP. The Beneficiary requested circuit upgrades in the Item 21 Attachment for Form 471 #954303, however in the BEAR identified above, the Beneficiary submitted the prorated cost of the upgraded circuits in transition (\$8,260) in addition to the full monthly cost of the old circuits which had not yet been cut off from service. (Criteria 1, 4 and 5)</p> <p>b) FRN 2596059: The Beneficiary included ineligible charges totaling \$862 for additional directory listings and “other business” non-recurring charges in BEAR #'s 2146540, 2181863 and 2218543 submitted to SLP. The total of \$862 represents \$62.50 in monthly additional directory listing charges multiplied by twelve months plus two \$56 instances of “other business” non-recurring charges. (Criteria 1 to 3 and 5)</p>
Cause	The Beneficiary did not have an effective review and reconciliation process over Service Provider bills to validate that only eligible costs were submitted for reimbursement from the E-rate Program.
Effect	<p>The total monetary impact for this finding is an over disbursement of \$7,845.</p> <p>The monetary impact for FRN 2596201 is \$7,104 which represents the total ineligible circuit charges of \$8,260 multiplied by the 86% discount rate.</p> <p>The monetary impact for FRN 2596059 is \$741, which represents the sum of \$750 (additional directory listings) and \$112 (“other business” non-recurring charges) multiplied by the 86% discount rate.</p>
Recommendation	KPMG recommends that the Beneficiary enhance its review process of Service Provider bills to ensure that all ineligible services are identified and removed from E-rate Program reimbursement requests.
Beneficiary Response	<p>a) These prorated charges were submitted after consulting the USAC Hotline for advice.</p> <p>b) The Beneficiary revised its telecommunications provider bills review process to include Verizon’s Web portal review which provides additional billing details. The Verizon’s Web portal review that KPMG conducted provided additional levels of details than that of hard copy bills sent by the service provider each month.</p>
KPMG Response	KPMG acknowledges the Beneficiary’s response that they received guidance from the USAC hotline related to the pro-rated charges, however we received no documentation of this guidance. Additionally, we noted that the Beneficiary included and excluded the pro-rated charges inconsistently from month to month.

**USAC
Management
Response**

The auditors examined the Beneficiary's FCC Forms 472 (BEAR) and determined that the Beneficiary submitted the prorated cost of the upgraded circuits in transition in addition to the full monthly cost of the old circuits which had not yet been cut off from service. Additionally, the Beneficiary included ineligible directory assistance charges and non-reoccurring charges that the Beneficiary did not request in its contact with the Service Provider.

Going forward, the Beneficiary should subtract the ineligible charges prior to completing and submitting FCC Form 472. USAC Management will conduct outreach to the Beneficiary to address the areas of deficiency that are identified in the audit report.

USAC Management concurs with the audit finding and recommendation. USAC will seek recovery of the Schools and Libraries Program support consistent with the Rules.

Criteria

(1) Per 47 C.F.R. Section 54.502(a) (2014), "*Supported services*. Supported services are listed in the Eligible Services List as updated annually in accordance with paragraph (b) of this section."

(2) Per the 2014 Eligible Services List, page 6: "The following charges are not eligible for E-rate support:...Extra costs for directory listings."

(3) Per the 2014 Eligible Services List, page 6: "The following charges are not eligible for E-rate support: ...Services that are not related to voice services."

(4) Per the 2014 Eligible Services List, page 21: "In addition to items indicated in other sections of this Eligible Services List, the following items are not eligible for discount: ... Any product or service that is duplicative of a service for which funding has already been requested."

(5) Per FCC Form 472 Universal Service for Schools and Libraries Billed Entity Applicant Reimbursement Form Instructions, OMB 3060-0856 (July 2013) at 5: "Column (12) - Total (Undiscounted) Amount for Service per FRN. The total undiscounted amount represents the total amount paid per FRN for which you are seeking reimbursement of the discount on this BEAR. This total undiscounted amount should reflect the charges for services actually received and should not be an estimated amount. The total undiscounted amount should also not be the total annual amount for the FRN, unless you are making an annual filing or are contractually obligated to pay the entire cost of services. You must deduct charges for any ineligible services, or for eligible services delivered for ineligible recipients or used for ineligible purposes. You should gather your customer bills and any other documentation you need to support your calculations."

Conclusion

KPMG's evaluation of the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 identified two findings, Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering and Beneficiary Over-Invoiced SLP for Ineligible Services, relative to the disbursements made from the E-rate Program for Funding Year 2014. Detailed information relative to the findings is described in the Findings, Recommendations and Beneficiary Responses section above.

The combined estimated monetary impact of these findings is as follows:

Service Type	Monetary Impact Overpayment (Underpayment)
Telecommunications Services	\$ 7,845
Internet Access	\$570,426
Total Impact	\$578,271

KPMG recommends that the Beneficiary enhance its competitive bidding review process to verify that bid evaluation scoring sheets are accurate in light of the content of bids and to ensure that the most cost-effective bid is selected. Additionally, we recommend that the Beneficiary enhance the review of Service Provider bills to verify that all ineligible services are excluded before submitting reimbursement requests to SLP.

Exhibit 5

Selvon Smith
BROOKLYN PUBLIC LIBRARY
10 GRAND ARMY PLZ
BROOKLYN, NY 11238



Notification of Commitment Adjustment Letter

Funding Year 2014: July 1, 2014 - June 30, 2015

March 24, 2017

Selvon Smith
BROOKLYN PUBLIC LIBRARY
10 GRAND ARMY PLZ
BROOKLYN, NY 11238

Re: Form 471 Application Number: 954303
Funding Year: 2014
Applicant's Form Identifier: Brooklyn14 Telco/Internet
Billed Entity Number: 123803
FCC Registration Number: 0009743519
SPIN: 143030766
Service Provider Name: Windstream Communications, LLC
Service Provider Contact Person: William Elliott

Our routine review of Schools and Libraries Program (SLP) funding commitments has revealed certain applications where funds were committed in violation of SLP rules.

In order to be sure that no funds are used in violation of SLP rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions>.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRNs) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Program - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, see "Appeals" in the "Schools and Libraries" section of the USAC website.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letters" posted at <http://www.usac.org/sl/tools/samples.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with SLP rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Program
Universal Services Administrative Company

cc: William Elliott
Windstream Communications, LLC

Funding Commitment Adjustment Report for
Form 471 Application Number: 954303

Funding Request Number:	2596173
Services Ordered:	INTERNET ACCESS
SPIN:	143030766
Service Provider Name:	Windstream Communications, LLC
Contract Number:	1059034
Billing Account Number:	61139640
Site Identifier:	123803
Original Funding Commitment:	\$570,675.36
Commitment Adjustment Amount:	\$570,675.36
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$570,425.53
Funds to be Recovered from Applicant:	\$570,425.53
Funding Commitment Adjustment Explanation:	

As result of a audit, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. The applicant incorrectly inverted the scores of the bidders on the bid evaluation worksheet which resulted in the most cost effective vendor not being selected. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

Exhibit 6

May 22, 2017

By Electronic Mail

Schools and Libraries Program Correspondence Unit
Attn: Letter of Appeal
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685
appeals@sl.universalservice.org

Re: Letter of Appeal – Form 471 Application No. 954303

Brooklyn Public Library (“BPL”) hereby appeals the Notification of Commitment Adjustment (“COMAD”) letter Universal Service Administrative Company (“USAC”) issued to BPL dated March 24, 2017, related to the above-referenced Form 471 application.¹ BPL provides the following information in support of its appeal:

Funding Commitment Information

- *Applicant/Billed Entity Name:* Brooklyn Public Library
- *Billed Entity Number:* 123803
- *Form 471 Application Number:* 954303
- *Funding Request Number:* 2596173
- *Funding Year:* 2014
- *Brooklyn’s FCC Registration Number:* 0009743519
- *Service Provider Name:* Windstream Communications, LLC
- *SPIN:* 143030766

Contact Information

USAC may contact the following individuals, as BPL’s counsel, to discuss this appeal:

Ari Q. Fitzgerald
Hogan Lovells US LLP
555 Thirteenth Street NW
Washington, DC 20004
Phone: (202) 637-5423

¹ A true and correct copy of the USAC COMAD letter is attached as “Exhibit A” to this correspondence.

Fax: (202) 637-5910
Email: ari.fitzgerald@hoganlovells.com

C. Sean Spivey
Hogan Lovells US LLP
555 Thirteenth Street NW
Washington, DC 20004
Phone: (202) 637-3280
Fax: (202) 637-5910
Email: sean.spivey@hoganlovells.com

Background Information and Reason for the Appeal

The following language from the COMAD letter forms the basis of BPL's appeal:

The price of eligible products and services was not the primary factor in the vendor selection process Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full²

BPL at all times acted in good faith and consistent with the purposes underlying the Federal Communications Commission's ("FCC's" or "Commission's") competitive bidding rules.³ Section 54.511(a) of the Commission's rules requires E-rate recipients to "carefully consider all bids submitted and . . . select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered."⁴ The FCC does not require schools and libraries to select the lowest bids offered, but rather "permit[s] schools and libraries 'maximum flexibility' to take service quality into account and to choose the offering or offerings that meets their needs 'most effectively and efficiently,' where this is consistent with other procurement rules under which they are obligated to operate."⁵ "When evaluating bids, however, applicants must have a separate 'cost category' and that category must be given more weight than any other single factor."⁶

BPL made price of eligible products and services the primary factor in its bid selection evaluation scheme. Additionally, BPL awarded the lowest-cost bidder the highest raw score for the price criterion. Unfortunately, BPL made a slight ministerial or clerical error that resulted in it selecting a different service provider than the bidder that submitted the lowest cost bid.

² Ex. A at 4.

³ See 47 C.F.R. § 54.511(a).

⁴ 47 C.F.R. § 54.511(a).

⁵ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶ 481 (1997).

⁶ See *Application for Review of a Decision of the Wireline Competition Bureau by Henrico County School District Richmond, Virginia*, Order, 29 FCC Rcd 10837, 10838 ¶ 2 (2014) ("*Henrico FCC Order*") (citing *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, Order, 18 FCC Rcd 26407 ¶ 50 (2003)).

BPL's bid assessment protocols complied with the competitive bidding rules. BPL created a bid evaluation matrix composed of several selection criteria, including price.⁷ BPL made clear in the notes section of the matrix that each selection criteria should be evaluated on a scale of one to five (with one representing the lowest score and five representing the highest score) and that the "[p]ercentage weights must add up to 100%. Price must be weighted the heaviest."⁸ BPL assigned a weighting value of 50 points to the price criteria—30 points more than the next highest weighted selection criteria ("Understanding of Needs").⁹

In addition to creating a compliant bid evaluation framework, BPL gave the lowest-cost bidder ("Bidder Three") the highest raw score in the price category.¹⁰ BPL's only error was inverting the raw score between the two higher cost service providers for the price criteria. The result of BPL's minor error was to select a different service provider than the bidder with the lowest cost bid.

BPL's dissatisfaction with Bidder Three's proposal is evident by the other scores BPL assigned the bidder for the other selection criteria. BPL assigned the lowest raw scores to Bidder Three for each of the other four criteria: Understanding of Needs, Prior Experience, Personnel Qualifications and Financial Stability.¹¹ As KPMG demonstrated in its audit letter,¹² the totals under the recalculated bid evaluation were almost identical.¹³

BPL has adopted additional safeguards to ensure an adequate review process in the wake of the independent audit. As BPL stated in its response to the independent audit, it has adopted the following new review procedures:

Following the evaluation discussion among the Library's network manager and the two Library managers, (1) the network manager will enter the scores from the network manager's and the two Library managers' individual bid evaluation scoring sheets into the summary evaluation scoring matrix[:]; (2) the network manager will review the summary evaluation scoring matrix against the individual bid evaluation scoring sheets and notes from the evaluation discussion for accuracy; (3) when the network manager completes his/her review, copies of the summary evaluation scoring matrix, individual bid evaluation scoring sheets, and notes from the valuation discussion will be forwarded to the two Library managers on the evaluation team, who will each thoroughly review the data for accuracy; and (4) once the two reviews

⁷ A true and correct copy of BPL's E-Rate Bid Assessment Worksheet used for Form 471 Application No. 954303 is attached as "Exhibit B" to this correspondence.

⁸ Ex. B.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* Note that Bidder Three and Bidder One tied for lowest score (3) under the "Personnel Qualifications" criteria. *Id.*

¹² A true and correct copy of KPMG LLP's July 27, 2016 audit letter for Funding Year 2014 is attached as "Exhibit C" to this correspondence.

¹³ Ex. C at 11. Specifically, Bidder Three should have received 400 points under the recalculated bid evaluation criteria, and Bidders One and Two would have each received 395 points—a **difference of only five points between the selected vendor and lowest-cost vendor.**

have been conducted and any necessary corrections are made, the winning bidder will be selected based on the final scores in the summary evaluation scoring matrix.¹⁴

BPL committed that “Price will continue to be the primary factor in [its] selection process (*i.e.*, Price will be given the highest percentage in the total evaluation weighting).”¹⁵

Specific Relief Sought

BPL’s adopted process was designed to make the price of eligible products and services “the primary factor” in its vendor selection process. But BPL committed a ministerial error in implementing its bid evaluation criteria that led to a provider other than the lowest-cost provider being selected. Therefore, BPL asks that USAC allow BPL to correct his ministerial error, reverse its prior finding and rescind the COMAD letter.

Please contact the undersigned directly with any questions or concerns or to discuss this appeal in greater detail.

Respectfully submitted,

/s/ Ari Q. Fitzgerald

Ari Q. Fitzgerald

Partner
ari.fitzgerald@hoganlovells.com
D +1 202 637 5423

Enclosures

cc: William Elliott, Windstream Communications LLC

¹⁴ *Id.* at 12.

¹⁵ *Id.*

Exhibit A

Selvon Smith
BROOKLYN PUBLIC LIBRARY
10 GRAND ARMY PLZ
BROOKLYN, NY 11238



Notification of Commitment Adjustment Letter

Funding Year 2014: July 1, 2014 - June 30, 2015

March 24, 2017

Selvon Smith
BROOKLYN PUBLIC LIBRARY
10 GRAND ARMY PLZ
BROOKLYN, NY 11238

Re: Form 471 Application Number: 954303
Funding Year: 2014
Applicant's Form Identifier: Brooklyn14 Telco/Internet
Billed Entity Number: 123803
FCC Registration Number: 0009743519
SPIN: 143030766
Service Provider Name: Windstream Communications, LLC
Service Provider Contact Person: William Elliott

Our routine review of Schools and Libraries Program (SLP) funding commitments has revealed certain applications where funds were committed in violation of SLP rules.

In order to be sure that no funds are used in violation of SLP rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions>.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRNs) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Program - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, see "Appeals" in the "Schools and Libraries" section of the USAC website.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letters" posted at <http://www.usac.org/sl/tools/samples.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with SLP rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Program
Universal Services Administrative Company

cc: William Elliott
Windstream Communications, LLC

Funding Commitment Adjustment Report for
Form 471 Application Number: 954303

Funding Request Number:	2596173
Services Ordered:	INTERNET ACCESS
SPIN:	143030766
Service Provider Name:	Windstream Communications, LLC
Contract Number:	1059034
Billing Account Number:	61139640
Site Identifier:	123803
Original Funding Commitment:	\$570,675.36
Commitment Adjustment Amount:	\$570,675.36
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$570,425.53
Funds to be Recovered from Applicant:	\$570,425.53
Funding Commitment Adjustment Explanation:	

As result of a audit, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. The applicant incorrectly inverted the scores of the bidders on the bid evaluation worksheet which resulted in the most cost effective vendor not being selected. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

Exhibit B

Project or Service
DescriptionInternet Access
Interenet Access

Selection Criteria	Weight*
Prices/Charges	50
Understanding of Needs	20
Prior Experience	15
Personnel Qualifications	10
Financial Stability	5
Other (describe)	
Other (describe)	

Verizon	
Raw Score**	Weighted Score***
3	150
4	80
4	60
3	30
5	25
	0
	0

Windstream	
Raw Score**	Weighted Score***
4	200
5	100
5	75
5	50
4	20
	0
	0

Cogent	
Raw Score**	Weighted Score***
5	250
3	60
3	45
3	30
3	15
	0
	0

None	
Raw Score**	Weighted Score***
0	0
0	0
0	0
0	0
0	0
	0
	0

Overall Ranking

100%

345

69%

445

89%

400

80%

0

0%

Vendor Selected: Windstream
 Approved By: Jeff Marable
 Title: Network Manager
 Date: 2/18/2014

Notes:

* Percentage weights must add up to 100%. Price must be weighted the heaviest

** Evaluated on scale of 1 to 5: 1=worst, 5=best

*** Weight x Raw Score

Exhibit C



Brooklyn Public Library
Audit ID: SL2015BE112
(BEN: 123803)

*Performance audit for the Universal Service Schools and
Libraries Program Disbursements related to Funding
Year 2014 as of August 31, 2015*

Prepared for: Universal Service Administrative Company

As of Date: July 27, 2016

KPMG LLP
1601 Market Street
Philadelphia, PA 19103

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
BACKGROUND	6
Program Overview	6
Beneficiary Overview	6
OBJECTIVES, SCOPE AND METHODOLOGY	8
Objectives	8
Scope.....	8
Methodology	8
RESULTS	10
Findings, Recommendations and Beneficiary Responses.....	10
Conclusion	14



KPMG LLP
1601 Market Street
Philadelphia, PA 19103-2499

EXECUTIVE SUMMARY

July 27, 2016

Mr. Wayne Scott, Vice President – Internal Audit Division
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, DC 20036

Dear Mr. Scott:

This report presents the results of our work conducted to address the performance audit objectives relative to the Brooklyn Public Library, Billed Entity Number (“BEN”) 123803, (“BPL” or “Beneficiary”) for disbursements, of \$1,407,355, made from the federal Universal Service Schools and Libraries Program (“SLP”) related to the twelve-month period ended June 30, 2015, as of August 31, 2015 (hereinafter “Funding Year 2014”). Our work was performed during the period from October 16, 2015 to July 27, 2016, and our results are as of July 27, 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards and *American Institute of Certified Public Accountants Consulting Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of this performance audit was to evaluate the Beneficiary’s compliance with the applicable requirements of 47 C.F.R. Part 54 of the Federal Communications Commission’s (“FCC”) Rules as well as FCC Orders governing federal Universal Service Support for the Schools and Libraries Support Mechanism (“E-rate Program”) relative to disbursements, of \$1,407,355, made from the E-rate Program related to Funding Year 2014.

As our report further describes, KPMG identified the following as a result of the work performed:

1. **SL2015BE112-F01: Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering** – While the Beneficiary had bid evaluation criteria in place to weigh price as the primary factor, they did not correctly calculate the raw pricing scores for two of three bids evaluated for Funding Request Number (“FRN”) 2596173 (Internet Access). As a result, the Beneficiary did not select the most cost effective bid.
2. **SL2015BE112-F02: Beneficiary Over-Invoiced the SLP for Ineligible Services** – The Beneficiary included ineligible charges for upgraded circuits in transition, additional directory listings and “other business” non-recurring charges in the E-rate Program reimbursement requests submitted under FRNs 2596201 and 2596059.

Based on the above results, we estimate that disbursements made to the Beneficiary from the E-rate Program related to Funding Year 2014 were \$578,271 higher than they would have been had the amounts been reported properly.

In addition, we also noted other matters that we have reported to the management of the Beneficiary in a separate letter dated July 27, 2016.



This performance audit did not constitute an audit of financial statements in accordance with *Government Auditing Standards*. KPMG was not engaged to, and did not render an opinion on the Beneficiary's internal controls over financial reporting or over financial management systems (for purposes of OMB's Circular No. A-127, *Financial Management Systems*, July 23, 1993, as revised). KPMG cautions that projecting the results of our evaluation to future periods is subject to the risks that controls may become inadequate because of changes in conditions or because compliance with controls may deteriorate.

This report is intended solely for the use of the Universal Service Administrative Company, the Beneficiary, and the FCC, and is not intended to be and should not be relied upon by anyone other than these specified parties.

Sincerely,

KPMG LLP

List of Acronyms

Acronym	Definition
BEAR	Billed Entity Applicant Reimbursement
BEN	Billed Entity Number
BPL	Brooklyn Public Library
C.F.R.	Code of Federal Regulations
CIPA	Children's Internet Protection Act
FCC	Federal Communications Commission
FCC Form 470	Description of Services Requested and Certification Form 470
FCC Form 471	Description of Services Ordered and Certification Form 471
FCC Form 472	Billed Entity Applicant Reimbursement Form
FCC Form 474	Service Provider Invoice Form
FCC Form 479	Certification of Compliance with the Children's Internet Protection Act
FCC Form 486	Receipt of Service Confirmation and Children's Internet Protection Act and Technology Plan Certification Form
FRN	Funding Request Number
Funding Year 2014	Disbursements made from the E-rate Program related to the twelve-month period ended June 30, 2015 (as of August 31, 2015)
GAGAS	Generally Accepted Government Auditing Standards
Item 21 Attachment	Description of the products and services for which discounts are sought in the FCC Form 471
SLP	Schools and Libraries Program
SPI	Service Provider Invoice
USAC	Universal Service Administrative Company
USF	Universal Service Fund

BACKGROUND

Program Overview

USAC is an independent not-for-profit corporation that operates under the direction of the FCC pursuant to 47 C.F.R. Part 54. The purpose of USAC is to administer the USF through four support mechanisms: High Cost; Low Income; Rural Health Care; and Schools and Libraries. These four support mechanisms ensure that all people regardless of location or income level have affordable access to telecommunications and information services. USAC is the neutral administrator of the USF and may not make policy, interpret regulations or advocate regarding any matter of universal service policy.

The Schools and Libraries (E-rate) Program is one of four support mechanisms funded through a Universal Service fee charged to telecommunications companies that provide interstate and/or international telecommunications services. USAC administers the USF at the direction of the FCC; USAC's SLP administers the E-rate Program.

The E-rate Program provides discounts to assist eligible schools and libraries in the United States to obtain affordable telecommunications equipment and services and Internet access. Five service categories are funded:

- Telecommunications
- Telecommunications Services
- Internet Access
- Internal Connections Other than Basic Maintenance
- Basic Maintenance of Internal Connections

Discounts range from 20% to 90% of the costs of eligible services, depending on the level of poverty and the urban/rural status of the population served. Eligible schools, school districts and libraries may apply individually or as part of a consortium.

The E-rate Program supports connectivity – the conduit or pipeline for communications using telecommunications services and/or the Internet. The school or library is responsible for providing additional resources such as the end-user equipment (computers, telephone handsets, and modems), software, professional development, and the other elements that are necessary to fully enable such connectivity.

USAC engaged KPMG to conduct a performance audit relating to the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules as well as FCC Orders governing the E-rate Program relative to disbursements, of \$1,407,355, made for Funding Year 2014.

Beneficiary Overview

Brooklyn Public Library (BEN# 123803), is a public library system located in Brooklyn, New York, that serves over 2.5 million residents of the borough of Brooklyn.

The following table illustrates the E-rate Program support disbursed by USAC to the Beneficiary for Funding Year 2014 by service type:

Service Type	Amount Committed	Amount Disbursed
Internet Access	\$ 570,675	\$ 570,426
Telecommunications Services	\$ 913,180	\$ 836,929
Total	\$1,483,855	\$1,407,355

Source: USAC

Note: The amounts committed and disbursed reflect Funding Year 2014 activity as of August 31, 2015.

The committed total represents one FCC Form 471 application with five FRNs. We selected three FRNs, which represent \$1,327,424 of the funds disbursed for the audit period, to perform the procedures enumerated below related to the Funding Year 2014 application submitted by the Beneficiary.

OBJECTIVES, SCOPE AND METHODOLOGY

Objectives

The objective of this performance audit was to evaluate the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules as well as FCC Orders governing the E-rate Program relative to disbursements of \$1,407,355 made from the E-rate Program for Funding Year 2014. See the Scope section below for a discussion of the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules that are covered by this performance audit.

Scope

The scope of this performance audit includes, but is not limited to, examining on a test basis, evidence supporting the competitive bidding process undertaken to select service providers, data used to calculate the discount percentage and the type and amount of services received, invoices supporting services delivered to the Beneficiary and reimbursed via the E-rate Program, as well as performing other procedures we considered necessary to form a conclusion relative to disbursements made from the E-rate Program for Funding Year 2014.

KPMG identified the following areas of focus for this performance audit:

1. Application Process
2. Competitive Bid Process
3. Calculation of the Discount Percentage
4. Invoicing Process
5. Reimbursement Process
6. Record Keeping
7. Final Risk Assessment

Methodology

This performance audit includes procedures related to the E-rate Program for which funds were received by the Beneficiary for Funding Year 2014. The procedures conducted during this performance audit include the following:

1. Application Process

We obtained an understanding of the Beneficiary's processes relating to the application and use of E-rate Program funds. Specifically, for the FRNs audited, we examined documentation to support the Beneficiary's effective use of funding and that adequate controls exist to determine whether funds were used in accordance with the FCC's Rules. We used inquiry to determine whether the Beneficiary was eligible to receive funds and had the necessary resources to support the services for which funding was requested. We also used inquiry to determine if any individual schools or entities related to the Beneficiary are receiving USAC funded services through separate FCC Forms 471 and FRNs.

We obtained and examined documentation to determine whether the Beneficiary complied with the FCC's CIPA requirements. Specifically, we obtained and evaluated the Beneficiary's Internet Safety

Policy, and obtained an understanding of the process by which the Beneficiary communicated and administered the policy.

2. Competitive Bid Process

For the FRNs audited, we obtained and examined documentation to determine whether all bids received were properly evaluated and that price of the eligible services was the primary factor considered. We also obtained and examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 470 was posted on USAC's website before signing contracts or executing month-to-month agreements with the selected service providers. We reviewed the service provider contracts to determine whether they were properly executed. We evaluated the services requested and purchased for cost effectiveness as well.

3. Calculation of the Discount Percentage

For the FRNs audited, we obtained and examined documentation to understand the methodology used by the Beneficiary to calculate the discount percentage. We also obtained and examined documentation supporting the discount percentage calculation and determined if the calculations were accurate.

4. Invoicing Process

For the FRNs audited, we obtained and examined invoices for which payment was disbursed by USAC to determine that the services claimed on the FCC Form 472 (BEARs) and corresponding service provider bills were consistent with the terms and specifications of the service provider agreements. We also examined documentation to determine whether the Beneficiary paid its non-discounted share in a timely manner. KPMG utilized a statistical sampling methodology to select a sample of invoices for review.

5. Reimbursement Process

For the FRNs audited, we obtained and examined invoices submitted for reimbursement for the services delivered to the Beneficiary and performed procedures to determine whether USAC was invoiced properly. Specifically, we reviewed invoices associated with the BEAR forms for services provided to the Beneficiary. We verified that the services claimed on the BEAR forms and corresponding service provider bills were consistent with the terms and specifications of the service provider agreements and eligible in accordance with the E-rate Program Eligible Services List.

6. Record Keeping

We determined whether the Beneficiary's record retention policies and procedures are consistent with the E-rate Program rules. Specifically, we determined whether the Beneficiary was able to provide the documentation requested in the audit notification, for the FRNs audited, as well as retained and provided the documentation requested in our other audit procedures.

7. Final Risk Assessment

Based on the performance of the above audit procedures for the sampled FRNs, we considered any non-compliance detected during the audit and its effect on the FRNs excluded from the initial sample. We also considered whether any significant risks identified during the audit that may not have resulted in exceptions on the FRNs audited could affect other FRNs. Based on the coverage of

disbursements with the selected FRNs, KPMG concluded that expansion of the scope of the audit was not warranted.

RESULTS

KPMG's performance audit results include a listing of findings, recommendations, Beneficiary's responses and USAC management's responses with respect to the Beneficiary's compliance with FCC requirements, and an estimate of the monetary impact of such findings relative to 47 C.F.R. Part 54 applicable to disbursements made from the E-rate Program for Funding Year 2014.

Findings, Recommendations and Beneficiary Responses

KPMG's performance audit procedures identified two findings. The findings, including the condition, cause, effect, recommendation, Beneficiary response, Service Provider response, USAC management response and criteria are as follows:

Finding No. **SL2015BE112-F01: Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering**

Condition While the Beneficiary had bid evaluation criteria in place to weight price as the primary factor, they did not correctly calculate the raw pricing scores for two of three bids evaluated for FRN 2596173 (Internet Access). As a result, the Beneficiary did not select the most cost effective bid.

Table 1 below shows the price included in each bid and the raw pricing scores that the Beneficiary assigned to each bid. As shown, the Beneficiary inverted the raw scores for Bids 1 and 2. Based on the prices included in each bid, the raw scores should have matched what is shown in the recalculated raw score column of Table 1.

Table 1: Raw Pricing Scores

Bid #	Bid Price	Original Raw Score	Recalculated Raw Score
Bid 1	\$ 21,865	3	4
Bid 2	\$ 55,298	4	3
Bid 3	\$ 5,298 to 8,956	5	5

Table 2 below shows the Beneficiary's original bid evaluation which resulted in the selection of Bid 2. Table 3 shows the Recalculation of the bid evaluation with the correct raw pricing scores, and the winner would have been Bid 3.

Table 2: Original Bid Evaluation

Selection Criteria	Weight	Bid 1		Bid 2 (Winner)		Bid 3	
		Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score
Price	50	3	150	4	200	5	250
Understanding of Needs	20	4	80	5	100	3	60
Prior Experience	15	4	60	5	75	3	45
Personnel Qualifications	10	3	30	5	50	3	30
Financial Stability	5	5	25	4	20	3	15
Total			345		445		400

Table 3: Recalculated Bid Evaluation

Selection Criteria	Weight	Bid 1		Bid 2		Bid 3 (Winner)	
		Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score
Price	50	4	200	3	150	5	250
Understanding of Needs	20	4	80	5	100	3	60
Prior Experience	15	4	60	5	75	3	45
Personnel Qualifications	10	3	30	5	50	3	30
Financial Stability	5	5	25	4	20	3	15
Total			395		395		400

Cause The Beneficiary did not have an adequate review process in place to verify that the raw pricing scores were calculated correctly.

Effect The monetary effect for this finding is \$570,426. This amount represents the total disbursement for FRN 2596173.

Recommendation KPMG recommends that the Beneficiary enhance its review process to verify that bid evaluation scoring sheets are accurate in light of the content of bids and to ensure that the most cost effective bid is selected.

Beneficiary Response As stated in the Condition section above, “the Beneficiary had bid evaluation criteria in place to weigh price as the primary factor.” Specifically, as shown in Table 2, the Library created a separate selection criteria for Price and gave Price 50 percent of the total evaluation weighting. And for the criteria of Price, the Library appropriately gave the most points (5 points) to Bid 3 because it had the lowest price.

Unfortunately, for Funding Year 2014, after the Library’s network manager and two of the Library’s managers had discussed the raw scores to be awarded to each vendor for each selection criteria, the Library’s network manager made a clerical error and inverted the raw Price scores for Bids 1 and 2 when he was typing the raw scores into a summary evaluating scoring matrix on his computer. This is shown in Tables 1 and 2 above. This clerical error resulted in an incorrect calculation of the final scores. Nevertheless, with regard to three of the four other selection criteria (Understanding of Needs, Prior Experience, and Financial Stability), Bid 3 had the lowest scores, reflecting the Library’s opinion at the time

of bid evaluation that, on these non-price criteria, Bid 3 was less qualified than the other two Bids.

Once the Library was made aware of this clerical error, it enhanced its review process to verify that its bid evaluation scoring sheets are accurate and to ensure that a similar clerical error does not occur again. Specifically, following the evaluation discussion among the Library's network manager and the two Library managers, (1) the network manager will enter the scores from the network manager's and the two Library managers' individual bid evaluation scoring sheets into the summary evaluation scoring matrix, (2) the network manager will review the summary evaluation scoring matrix against the individual bid evaluation scoring sheets and notes from the evaluation discussion for accuracy; (3) when the network manager completes his/her review, copies of the summary evaluation scoring matrix, individual bid evaluation scoring sheets, and notes from the evaluation discussion will be forwarded to the two Library managers on the evaluation team, who will each thoroughly review the data for accuracy; and (4) once the two reviews have been conducted and any necessary corrections are made, the winning bidder will be selected based on the final scores in the summary evaluation scoring matrix. As was the case in Funding Year 2014, Price will continue to be the primary factor in the Library's selection process (*i.e.*, Price will be given the highest percentage in the total evaluation weighting).

**USAC
Management
Response**

The auditors reviewed the Beneficiary's bid evaluation to determine if it selected the most cost effective bid with price being the primary factor. The Beneficiary had bid evaluation criteria in place to weigh price as the primary factor, however the raw pricing score for two of three bids evaluated for FRN 2596173 was miscalculated.

Going forward, the Beneficiary should implement a review process to verify the accuracy of its bid evaluation scores to ensure that the most cost effective bid with price as the primary factor is selected. USAC Management will conduct outreach to the Beneficiary to address the areas of deficiency that are identified in the audit report.

USAC Management concurs with the finding and recommendation. USAC will seek recovery of the Schools and Libraries Program support consistent with the Rules.

Criteria

Per 47 C.F.R. Section 54.511(a) (2014), "*Selecting a provider of eligible services.* Except as exempted in §54.503(e), in selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered."

Finding No.	<u>SL2015BE112-F02: Beneficiary Over-Invoiced SLP for Ineligible Services</u>
Condition	<p>Ineligible charges for upgraded circuits in transition, additional directory listings and “other business” non-recurring charges were included in the Beneficiary’s E-rate Program reimbursement request.</p> <p>a) FRN 2596201: The Beneficiary included ineligible prorated charges totaling \$8,260 related to circuit upgrades in BEAR #2218513 submitted to SLP. The Beneficiary requested circuit upgrades in the Item 21 Attachment for Form 471 #954303, however in the BEAR identified above, the Beneficiary submitted the prorated cost of the upgraded circuits in transition (\$8,260) in addition to the full monthly cost of the old circuits which had not yet been cut off from service. (Criteria 1, 4 and 5)</p> <p>b) FRN 2596059: The Beneficiary included ineligible charges totaling \$862 for additional directory listings and “other business” non-recurring charges in BEAR #'s 2146540, 2181863 and 2218543 submitted to SLP. The total of \$862 represents \$62.50 in monthly additional directory listing charges multiplied by twelve months plus two \$56 instances of “other business” non-recurring charges. (Criteria 1 to 3 and 5)</p>
Cause	The Beneficiary did not have an effective review and reconciliation process over Service Provider bills to validate that only eligible costs were submitted for reimbursement from the E-rate Program.
Effect	<p>The total monetary impact for this finding is an over disbursement of \$7,845.</p> <p>The monetary impact for FRN 2596201 is \$7,104 which represents the total ineligible circuit charges of \$8,260 multiplied by the 86% discount rate.</p> <p>The monetary impact for FRN 2596059 is \$741, which represents the sum of \$750 (additional directory listings) and \$112 (“other business” non-recurring charges) multiplied by the 86% discount rate.</p>
Recommendation	KPMG recommends that the Beneficiary enhance its review process of Service Provider bills to ensure that all ineligible services are identified and removed from E-rate Program reimbursement requests.
Beneficiary Response	<p>a) These prorated charges were submitted after consulting the USAC Hotline for advice.</p> <p>b) The Beneficiary revised its telecommunications provider bills review process to include Verizon’s Web portal review which provides additional billing details. The Verizon’s Web portal review that KPMG conducted provided additional levels of details than that of hard copy bills sent by the service provider each month.</p>
KPMG Response	KPMG acknowledges the Beneficiary’s response that they received guidance from the USAC hotline related to the pro-rated charges, however we received no documentation of this guidance. Additionally, we noted that the Beneficiary included and excluded the pro-rated charges inconsistently from month to month.

**USAC
Management
Response**

The auditors examined the Beneficiary's FCC Forms 472 (BEAR) and determined that the Beneficiary submitted the prorated cost of the upgraded circuits in transition in addition to the full monthly cost of the old circuits which had not yet been cut off from service. Additionally, the Beneficiary included ineligible directory assistance charges and non-reoccurring charges that the Beneficiary did not request in its contact with the Service Provider.

Going forward, the Beneficiary should subtract the ineligible charges prior to completing and submitting FCC Form 472. USAC Management will conduct outreach to the Beneficiary to address the areas of deficiency that are identified in the audit report.

USAC Management concurs with the audit finding and recommendation. USAC will seek recovery of the Schools and Libraries Program support consistent with the Rules.

Criteria

(1) Per 47 C.F.R. Section 54.502(a) (2014), "*Supported services*. Supported services are listed in the Eligible Services List as updated annually in accordance with paragraph (b) of this section."

(2) Per the 2014 Eligible Services List, page 6: "The following charges are not eligible for E-rate support:...Extra costs for directory listings."

(3) Per the 2014 Eligible Services List, page 6: "The following charges are not eligible for E-rate support: ...Services that are not related to voice services."

(4) Per the 2014 Eligible Services List, page 21: "In addition to items indicated in other sections of this Eligible Services List, the following items are not eligible for discount: ... Any product or service that is duplicative of a service for which funding has already been requested."

(5) Per FCC Form 472 Universal Service for Schools and Libraries Billed Entity Applicant Reimbursement Form Instructions, OMB 3060-0856 (July 2013) at 5: "Column (12) - Total (Undiscounted) Amount for Service per FRN. The total undiscounted amount represents the total amount paid per FRN for which you are seeking reimbursement of the discount on this BEAR. This total undiscounted amount should reflect the charges for services actually received and should not be an estimated amount. The total undiscounted amount should also not be the total annual amount for the FRN, unless you are making an annual filing or are contractually obligated to pay the entire cost of services. You must deduct charges for any ineligible services, or for eligible services delivered for ineligible recipients or used for ineligible purposes. You should gather your customer bills and any other documentation you need to support your calculations."

Conclusion

KPMG's evaluation of the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 identified two findings, Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering and Beneficiary Over-Invoiced SLP for Ineligible Services, relative to the disbursements made from the E-rate Program for Funding Year 2014. Detailed information relative to the findings is described in the Findings, Recommendations and Beneficiary Responses section above.

The combined estimated monetary impact of these findings is as follows:

Service Type	Monetary Impact Overpayment (Underpayment)
Telecommunications Services	\$ 7,845
Internet Access	\$570,426
Total Impact	\$578,271

KPMG recommends that the Beneficiary enhance its competitive bidding review process to verify that bid evaluation scoring sheets are accurate in light of the content of bids and to ensure that the most cost-effective bid is selected. Additionally, we recommend that the Beneficiary enhance the review of Service Provider bills to verify that all ineligible services are excluded before submitting reimbursement requests to SLP.